

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DISH NETWORK, L.L.C.,

Plaintiff,

v.

AMERICAN BROADCASTING  
COMPANIES, INC., CBS CORPORATION,  
FOX ENTERTAINMENT GROUP, INC.,  
FOX TELEVISION HOLDINGS, INC., FOX  
CABLE NETWORK SERVICES, L.L.C., and  
NBC UNIVERSAL MEDIA, L.L.C.,

Defendants.

Civil Action No.:12-cv-4155

**RESPONSE OF AMERICAN BROADCASTING COMPANIES, INC. TO  
PLAINTIFF'S MEMORANDUM REGARDING PENDING CROSS-MOTIONS**

Defendant American Broadcasting Companies, Inc. intends to file in two days an Answer and (together with two related entities, ABC, Inc. and Disney Enterprises, Inc.) Counterclaims alleging that Plaintiff's PrimeTime Anytime and Auto Hop services constitute a breach of contract and copyright infringement. Although the pending cross-motions are not addressed to these parties, Plaintiff has argued that the filing of an Answer and Counterclaims by American Broadcasting Companies, Inc. has a bearing on the outcome of those motions. American Broadcasting Companies, Inc. submits this brief memorandum to explain its reason for filing in this Court and to state its position with respect to the question of venue.

American Broadcasting Companies, Inc. is filing an Answer and Counterclaims in this Court because a forum selection clause in the contract between ABC, Inc. and Plaintiff requires that the contract claims asserted by ABC, Inc., be filed in this Court. As we have told Plaintiff's counsel, American Broadcasting Companies, Inc., the only ABC entity named as a Defendant in this case, is not a party to that agreement. American Broadcasting Companies, Inc. and Disney Enterprises, Inc. are the relevant copyright holders and are asserting copyright infringement claims that are not subject to the forum selection clause. *See Phillips v. Audio Active Ltd.*, 494 F.3d 378, 387-392 (2d Cir. 2007).

Although the forum selection clause benefits ABC, Inc., which is located in New York, rather than Plaintiff, which is located in Colorado, ABC, Inc. is willing to waive that provision, and all ABC-related parties will consent to a transfer to the Central District of California, if this Court determines that that is where the other claims in this case should be litigated.

Respectfully submitted,

WILLIAMS & CONNOLLY LLP

By \_\_\_\_\_/s/\_\_\_\_\_

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